

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(GO. Rt. No. 155/Lab./AIL/J/2012, dated 12th September 2012)

NOTIFICATION

Whereas, the Award in I.D.No.13 of 2006, dated 11-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Teleflex Medical Private Limited, Puducherry and 32 workers represented by CITU over their non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT (II ADDITIONAL
DISTRICT JUDGE) AT PUDUCHERRY**

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

Thursday, the 11th day of August 2011

I.D. No. 13/2006

The Secretary,
Center of Indian Trade Union (C.I.T.U)
No.42, Cuddalore Road,
Bharathi Mill Thittu,
Mudaliarpeta,
Puducherry-4.

.. Petitioner

Versus

The Managing Director,
M/s. Teleflex Medical Private Limited,
R.S. No. 23, Thirubuvanaï,
Mannadipet Commune,
Puducherry-605 107.

.. Respondent

This industrial dispute coming on this day for hearing before me, the petitioner called absent, though his counsel Thiru D. Soundararajan is on record, the 1st Thiru K. Babu, Advocate for the 2nd respondent and after perusing the case records, this court passed the following:

ORDER

This industrial dispute has been referred to this court by the Government of Puducherry, *vide* G.O. Rt. No. 56/2006/Lab./AIL/J, dated 30-3-2006 of the Labour Department, Puducherry to resolve the following disputes:

(a) (i) Whether employer-employee relationship exists between the management of M/s. Teleflex Medical Private Limited, Thirubuvanaï, Puducherry and the following 32 workers *viz.*, 1. Rajeshwari, K., 2. K. Sasikala, 3. C. Lakshmi, 4. S. Ambiga, 5. S. Lakshmi, 6. S. Thenmozhi, 7. G. Kavitha, 8. D. Dhanalakshmi, 9. V. Neela, 10. R. Thamilselvi, 11. R. Bharathi (Pannakuppam Village), 12. M. Kamala, 13. E. Umamageshwari, 14. R. Rajalakshmi, 15. R. Bharathi (Kumalam Village), 16. M. Mahalakshmi, 17. V. Sathiya, 18. J. Amsa, 19. S. Meenakshi, 20. T. Doss, 21. S. Sarasu Sundhari, 22. J. Latha, 23. Chitra, D., 24. T. Subbulakshmi, 25. K. Sumathara Devi, 26. P. Varalakshmi, 27. M. Kathavarayan, 28. A. Siva, 29. S. Nagarajan, 30. S. Indhumathi, 31. T. Chithra, 32. R. Misra.

(ii) If yes, (i) (a) Whether their non-employment by the management of M/s. Teleflex Medical Private Limited, Thirubuvanaï, Puducherry is justified or not?

(b) To what relief, the said workmen are entitled to?

(c) To compute the relief, if any awarded, in terms of money, if it can be so computed.

2. Petitioner called absent. Petitioner counsel reported no instruction. Hence, reference is closed.

Typed to my dictation, corrected and pronounced by me in the open court on this 11th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(GO. Rt. No. 156/Lab./AIL/J/2012, dated 12th September 2012)

NOTIFICATION

Whereas, the Award in I.D. No.17 of 2008, dated 15-6-2012 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the management of M/s. Holy Redeemers Finance Corporation, Puducherry and Thiru A. Arulprakasam over his non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms.No.20/91/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS. M.A, M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

Friday, the 15th day of June 2012.

I.D. No. 17/2008

A. Arulprakasam,
No. 82, Postman Street,
Radhakrishnan Nagar,
Ariyankuppam, Puducherry. . . Petitioner

Versus

Holy Redeemers Finance Corporation,
Villa Redemptoris Mater,
No. 6, Dumas Street, Puducherry . . Respondent

This petition coming before me for final hearing on 22-3-2012 in the presence of Thiru R.S. Zivanandam, Advocate for the petitioner, M/s. Law Solvers, Advocates for the respondent and upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.95/AIL/Lab./J/2008, dated 6-6-2008 of the Labour Department, Puducherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru A. Arulprakasam against the management of M/s. Holy Redeemers Finance Corporation, Puducherry over his non-employment is justified or not?

(2) To what relief, Thiru A. Arulprakasam is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement has stated as follows:-

The respondent management is a Finance Company, run as partnership firm and Father A.S. Anthonisamy has been its Managing Partner for the past 25 years or more. The petitioner was appointed as a Clerk in the respondent company on 1-2-1985 and then he was promoted as Senior Assistant-II in 1989 and then he was transferred to the Management Finance Company's Branch Office.

Right from its inception in or about 1983, many of the labour law benefits were denied to the employees, of the Management Financial Company. The petitioner took initiative to start a trade union in the name of Teamers Trade Union with the guidance of the State Trade Union Secretary of the Communist Party of India.

The petitioner had been employed as Senior Assistant No. II in the said respondent management. There were four posts as given below:

1. Branch Manager - D. Joseph Jayaraj
2. Senior Assistant-I - B.M. Francis
3. Senior Assistant-II - A. Arulprakasam (Petitioner)
4. Senior Assistant - Charless Irudhayaraj
5. Attender - Irudayaraj Napoleon

The Branch Manager was always in-charge of cash of branch of the management - Finance Corporation firm. The petitioner in his capacity as Senior Assistant- II is only to assist the Branch Manager. All the documents, cash and other assets of the Branch Office was left in the custody of the Branch Manager. Though the said position was attempted to be changed by subsequent circular, that was not put into practice in the said Branch Office during the years from 1989 till 20-7-1994, the date of dismissal order issued to him.

The Branch Office has been functioning in a hall wherein three tables and three chairs for the employees of the management and three chairs for the customers opposite to each table. All the three namely the Branch Manager, Senior Assistant-I, Senior Assistant- II will attend to the business of receipt of cash from the customers as well as payment of cash to the customers. Hence, if three or more customers come to the Branch Office either for making payment to the Branch or getting payment out of the Branch, each one of the above-mentioned three employees used to attend the business by signing the necessary papers and by receiving cash or paying cash to the customers. The Branch Manager was used to check the cash and sign the challan and pass payments and both the Assistants,

Senior Assistants-I, II will hand over cash to the Branch Manager every day. The office working hours as well as the customer business hours was from 9.30 to 12.30 hours and 14.00 to 17.00 hours. Then both the Assistant were used to hand over the cash balance and the books etc., to the Branch Manager on the same day.

In these circumstances, the Managing Partner namely A.S. Anthonisamy and Reddiarpalayam Branch Manager suddenly conspired together to check out the petitioner. Then the Branch Manager sent a letter dated 5-8-1993 to the petitioner stating that he has to hand over the cash in his chest at that time, when the petitioner was in a swollen and bruised condition due to the brutal beatings of the hooligans engaged by the workman wife and her Advocate. Then the petitioner went a oral or written request for leave of absences for the period from 31-7-1993 to 6-8-1993. There was no handing over of cash of ₹ 19,000 by the Branch Manager to petitioner on the morning of 31-7-1993. The confession statement is a false and fabricated one obtained by the management, when the petitioner was in mentally affected condition and also by playing fraud upon him, as if that was the only way to prevent loss of employment and arrest. Hence, the present industrial dispute is filed to reinstate the petitioner into service with back wages and other benefits.

3. The respondent in his counter statement has stated as follows:

The petitioner was initially appointed as Clerk in the respondent company with effect from 1-2-1985 and then designated as Senior Assistant with effect from 1-4-1989 and posted as Senior Assistant with effect from 1-4-1989 and posted as Senior Assistant -II at Reddiarpalayam Branch with effect from 20-7-1989 to assist the Branch Manager of Finance Corporation and the petitioner was assigned the job of Cashier.

The petitioner was served with a show cause notice dated 23-8-1993 for certain alleged grave and serious acts of omissions and commissions. He acknowledge the show cause notice on 24-8-1993 and submitted his written explanation by letter dated 31-8-1993. The respondent further called for clarification to the explanation of the petitioner by letter, dated 7-9-1993 and the petitioner had also submitted his clarification by letter, dated 15-9-1993. The respondent management duly considered the explanation and the clarification submitted by the petitioner and decided to charge sheet the petitioner for the alleged misconducts and proceeded against the petitioner as per law. In the above circumstances, the respondent suspended the petitioner *vide* letter No.19/HRFC/93, dated 25-11-1993 with immediate effect and the petitioner was also served with an enquiry notice *vide* letter No.18/HRFC/93,

dated 25-11-1993. The Enquiry Officer conducted the enquiry and has given enquiry report stating that all the four charges levelled against the petitioner were proved. Considering the facts and circumstances of the case and the gravity of the charges levelled against the petitioner, the disciplinary authority came to the conclusion that the petitioner was not a fit person to be retained the service and the respondent management awarded the punishment of dismissal from service of the petitioner with immediate effect. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and marked Ex.P1 to Ex.P6. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R8 were marked.

5. *Now the point for determination is:*

Whether the petitioner is entitled for the relief sought for?

On this point :

6. The contention of the petitioner is that he was appointed as a Clerk in the respondent company on 1-2-1985 and then he was promoted as Senior Assistant -II in 1989 and then he was transferred to the management Finance Company's Branch Office and he in his capacity as Senior Assistant-II is only to assist the Branch Manager and all the documents, cash and other assets of the Branch Office was left in the custody of the Branch Manager. He further contended that the Branch Manager, Senior Assistant-I, Senior Assistant-II will attend to the business of receipt of cash from the customers as well as payment of cash to the customers and hence, if three or more customers come to the Branch Office either for making payment to the Branch or getting payment out of the Branch, each one of the above-mentioned three employees used to attend the business by signing the necessary papers and by receiving cash or paying cash to the customers and the Branch Manager was used to check the cash and sign the challan and pass payments and both the Assistants, Senior Assistants-I, II will hand over cash to the Branch Manager every day and there was no handing over of cash of ₹ 19,000 by the Branch Manager to petitioner on the morning of 31-7-1993.

7. In order to prove his contention, the petitioner examined himself as PW.1 and PW.1 in his evidence has deposed about the said facts. He has marked Ex.P1 to Ex.P6. Ex.P1 is the copy of the Office Order, dated 30-4-1987. As per Ex.P1, he was the in-charge of loan collection and other duties as mentioned therein. Ex.P2 is the rules framed relating to the service conditions of employees of the respondent company with effect from 1-1-1988. Ex.P3 and Ex.P4 are the copy

of the office order, dated 15-7-1988, as per which, the petitioner will hold custody of the borrowers' pension books, secure cards, bank pass books, cheque books and documents pleaded as security and other work as mentioned therein. Ex.P5 is the copy of transfer order, dated 19-7-1989 sent to the petitioner. Ex.P6 is the entries relating to the transaction of the respondent company, made by its Branch Manager.

8. The contention of the respondent is that the petitioner was initially appointed as Clerk in the respondent company with effect from 1-2-1985 and then designated as Senior Assistant with effect from 1-4-1989 and posted as Senior Assistant with effect from 1-4-1989 and posted as Senior Assistant-II at Reddiarpalayam Branch with effect from 20-7-1989 to assist the Branch Manager of Finance Corporation and the petitioner was assigned the job of Cashier. He further contended that on 6-8-1993 when the cash which ought to have under the control of the petitioner, was verified, a shortage of cash of ₹ 18,000 was found and on questioning for the shortage of cash, he accepted that he unauthorisedly took the amount of ₹ 18,000 on 31-7-1993 itself and he had also given a written confessional statement in this regard. The learned counsel for the respondent has relied on the following decisions to support his contention:-

2010 II CLR 534:

"In cases of corruption/misappropriation, the only punishment is dismissal - In the instant case, the contention raised that punishment of dismissal from service, was disproportionate to proved misconduct, is not worth acceptance."

SC 2008 AIR 2594:

"A bank survives on the trust of its clientele and constituents. The position of the Manager of a bank is a matter of great trust. The employees of the bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the bank. Any misappropriation, even temporary, of the funds of the bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment... If the matter is to be viewed lightly or leniently, it will encourage other bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."

W.P. No.12638 of 2000 (Madras High Court, dated 27-7-2009):

"In the present case, the employer in this case has lost confidence in the delinquent employee, who has been found guilty of misappropriation and

breach of trust while working as a cashier in the bank. The plea before the Labour Court was only with regard to the quantum of punishment, the Industrial Tribunal has rightly refused to exercise its discretion under section 11-A of the Act to interfere with the quantum of punishment imposed."

2002(2) AWC 1185, (2002) 3 UPLBEC 2209:

"It is not merely that the petitioner has made a simple human error but has acted operation regarding the bank operation and it is relevant to mention here that the bank operates on public confidence and hence greater strictness is required from bank employee as compared to the employees of other departments, otherwise the public will lose confidence in the bank."

9. In order to support his claim, one Alphonse Leguori was examined as RW.1. RW.1 in his evidence has deposed about the said facts and has marked Ex.R1 to Ex.R5. Ex.R1 is the copy of the show cause notice issued to the petitioner regarding unauthorised leave taken by him and commission of misappropriation. Ex.R2 is the copy of the letter submitted by the petitioner to the respondent company. On perusal of Ex.R2, it is seen that the petitioner has admitted the unauthorised leave and commission of misappropriation. The relevant portion of Ex.R2 runs as follows:

"While I was drinking tea in the nearby shop, one of my relatives came and met me and told about some serious problem of my family. In the haste and severe pressure, I went for my house after taking ₹ 18,000 from the office, in order to settle the family problem without informing the Branch Manager.

I did not act on that day with any intention to do, but to the situation forced me to do so.

Later the family affair developed into a serious proportion and I could not control it. I was upset and was under mental agony. I was not in a position to turn to office up to 5-8-1993 from 2-8-1993.

Hence, I humbly explain you Sir, (i) Leaving the work without permission, (ii) neglect of work, (iii) Absence without leave letter for four days were not intention."

10. The learned counsel for the petitioner would submit that there was strained marital relationship between the petitioner and his wife Mary Amaliselvi and the petitioner's wife was in the habit of making false complaints before the police and the Managing Partner of the respondent firm, who is a Catholic Priest and the police and the Managing Partner started enquiring the petitioner often, due to which the petitioner became frustrated and he had to go to police station often and for that purpose, he would take the permission of the

Branch Manager. He further submitted that similarly on 30-7-1993, the petitioner had gone to the police station after informing the Branch Manager, but he was detained at the police station and hence he could not go for work and the petitioner was subsequently asked to be present at the police station till 5-8-1993, where he would be held up till the evenings and therefore, he could return for work only on 6-8-1993 and this fact is supported by the evidence of RW.1, who himself has stated in page 3 of his deposition that the police came to the office in search of the petitioner on the basis of a complaint lodged against him by his wife and immediately on return to work, he explained the situation and tendered leave letter and on being satisfied with his explanation, the respondent firm regularized his absence by granting earned leave for four days *vide* order, dated 24-9-1993.

11. But there is no evidence produced on the side of the petitioner to prove that the petitioner was detained in custody by the police from 30-7-1993 till 5-8-1993. The petitioner has also not produced any evidence to show that four days unauthorized leave taken by him, was regularized by the respondent. Hence, the above contention of the learned counsel for the petitioner cannot be taken into consideration.

12. The learned counsel for the petitioner further submitted that the petitioner was not a cashier, however, all the staff in the firm would deal with the cash. The said version would clearly prove that the learned counsel for the petitioner has indirectly admitted about handling of cash by all the staff members including the petitioner. Further the learned counsel for the respondent would submit that after having realised the fault committed by the petitioner, the petitioner had returned part of the misappropriated amount of ₹ 10,000 towards shortage of cash and had undertaken to pay the balance in 20 days time. This version has not been denied or admitted by the petitioner. The above act of admission of the petitioner would go to show that without permission or knowledge of the management, the petitioner has taken the office money for personal gain. Hence, when coupled with the document under Ex.R2 with the said version, it is proved that the petitioner has misappropriated a sum of ₹ 18,000 of the respondent management.

13. The learned counsel for the petitioner has contended that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and the Inquiry Officer has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles

of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings. In order to support his claim, he relied upon the following decision:-

2005 LAB.I.C.1073:

"Domestic enquiry - Validity - No Presenting Officer was appointed by management - Enquiry Officer had performed role of Presenting Officer in enquiry proceedings - He had examined all five witnesses on behalf of management - Question were put to elicit evidence in support of case of management - Enquiry Officer was thus biased - Enquiry proceeding held, vitiated."

14. The contention of the learned counsel for the respondent is that they have given full opportunity of fair hearing and followed the principles of natural justice while charging the delinquents and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from their services as per the procedure laid down under the Industrial Disputes Act and even in the domestic enquiry the petitioner has been allowed to be assisted by their co-employee and though the petitioner workmen have been given fair chance to cross-examine the witnesses and finally the Inquiry Officer has rightly come to the conclusion that the charges of the petitioners were proved.

15. It is pertinent to refer the following decisions, which are relevant to this case:

2001 III CLR 592:

"Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management

regarding trust worthiness or reliability of the employee must be alleged and proved. Else, the right reinstatement ordinarily available to the employee will be lost."

(2007) 1 Supreme Court Cases 222:

"The High Court has failed to appreciate that the delinquent employee categorically admitted that he had stolen the property of the Corporation. The Labour Court, on a careful perusal of the evidence, rightly ordered removal of the respondent from service. When the delinquent employee admitted his guilt before the Enquiry Officer and further deposed that he had handed over the stolen property and requested the Labour Court to excuse him since it was his first offence, the Tribunal rightly set aside the request by taking into consideration the entire factual circumstances on record and after careful examination of the same and held that the delinquent employee does not deserve any sympathy and therefore he ordered removal from service."

2003(4) CTC 166:

"Enquiry - Departmental Enquiry - Proved charges - Misappropriation of stocks and cash deposit - Termination pursuant to proved charges - Appeal filed under section 41 before Appellate Authority - Appellate Authority directed reinstatement with back wages - Writ petition challenging order of Appellate Authority - Magnitude of misconduct committed by delinquent is serious in nature - Delinquent has repaid part of the misappropriated amount - Mere repayment of amount will not solve problem - Appellate Authority recorded erroneous finding to effect that said charge was not sufficient for dismissal of delinquent from service - Charges not only admitted by delinquent but delinquent also paid part of the amount misappropriated by him - Observation made by Appellate Authority is an error apparent on face of record - No material to interfere with order of dismissal - Order of reinstatement set aside."

15. At this stage when I peruse the domestic enquiry report, Ex.R3 relating to the petitioner, it can be seen that the witnesses were examined in the enquiry of the petitioner on the side of the management. The petitioner has been permitted to appear through his Assistant Mr. Balasubramaniam. Initially Mr. S. Arokiasamy, Personnel Manager was acting as Presenting Officer, subsequently at the request of the petitioner, he was relieved and Mr. I. Alphonse Liguori was acted as Presenting Officer. The petitioner was asked to cross-examine the management witnesses and he cross-examined all the witnesses. From the evidence of the

witnesses and own admission of the delinquent employee, it was clearly proved in the enquiry that the petitioner has taken the money of ₹ 18,000 from the office, which is a grave misconduct. Eventhough the Personnel Manager, who was then Presenting Officer, was also examined in the above enquiry, the enquiry will not be affected in any way as per the above judgment, cited by the learned counsel for the petitioner. Because, apart from the above witness, who was the Personnel Manager, other three witnesses viz., D. Joseph Jayaraj, Branch Manager, B.M. Francis, Senior Assistant-I and V. Moses, Accountant-I were also examined in the enquiry and from the above evidences, the charges were spoken very well and the above misconducts were also very well established through their evidence. Finally, the Inquiry Officer decided the enquiry against the delinquents that all the charges framed against him are proved. From the above, it can be seen that the petitioner was given fair opportunity to defend his case and hence this court has come to the conclusion that the enquiry was conducted in a fair and proper manner and hence, the above decision cited by the learned counsel for the petitioner will not affect the present facts and circumstances of the case. For the above reasons, I find that the respondent management has rightly dismissed the petitioner from the service for the unauthorised absence and misappropriation of funds and I do not want to interfere with the order of the respondent management. Accordingly, this point is answered.

16. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 15th day of June, 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

List of witnesses examined for the petitioner:

P.W.1 — 2-6-2011 — Arulprakasam

List of witnesses examined for the respondent:

R.W.1 — 21-10-2011 -Alphonse Leguori

List of exhibits marked for the petitioner:

Ex.P1 — Copy of the office order, dated 30-4-1987

Ex.P2 — Copy of the rules framed relating to service conditions of the employees, dated 7-1-1988.

Ex.P3 — Copy of the office order, dated 15-7-1988

Ex.P4 — Copy of the office order, dated 15-7-1988

Ex.P5 — Copy of the proceedings, dated 19-7-1989

Ex.P6 — Entries made by the Branch Manager of the respondent company.

List of exhibits marked for the respondent:

Ex.R1 — Copy of the show cause notice, dated 23-8-1993

Ex.R2 — Copy of the explanation submitted by the petitioner, dated 31-8-1993.

Ex.R3 — Copy of the enquiry proceedings

Ex.R4 — Copy of the deposition of witnesses recorded in the enquiry.

Ex.R5 — Copy of the letter sent to the petitioner, dated 20-7-1994.

Ex.R6 — Complaint by the Branch Manager to the management, dated 7-8-1993.

Ex.R7 — Letter dated 7-9-1993 by the management to the petitioner

Ex.R8 — Enquiry report dated 20-6-1994 submitted by the Enquiry Officer.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 157/Lab./AIL/J/2012, dated 12th September 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 5 of 2004, dated 12-6-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Group 4 Securities Guardings Limited and its workman Thiru N. Jayabalan over his non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

Tuesday, the 12th day of June 2012

I.D. No. 5/2004

Jayabalan, S/o. Narayanasamy,
No. 16, 8th Cross, Rajaji Nagar,
Lawspet, Puducherry. . . Petitioner

Versus

1. The Director,
Training Division,
Group 4 Securities Guardings Limited,
Panchavati, 82-A, Sector 18,
Gurgaon.
2. The Regional Director,
Group 4 Securities Guardings Limited,
5, Mohan Kumaramangalam Street,
Nungambakkam High Road, Chennai.
3. The Branch Manager,
Group 4 Securities Guardings Limited,
Rajaji Nagar,
Puducherry-605 008. . . Respondents.

This petition coming before me for final hearing on 11-6-2012 in the presence of Tvl. A.V. Ramalingam, B. Rajeswari and S. Gokul Kannan, Advocates for the petitioner, Tvl. M. Udayabaskar, R. Raajarajane and D. Sivakumar, Advocates for the respondents and upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 172/2003/Lab./AIL/J, dated 18-12-2003 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioners and the respondent, *viz.*,

(1) Whether the petitioner N. Jayabalan comes under the purview of the definition of workmen under Industrial Disputes Act, 1947?

(2) If so,

(a) Whether his non-employment is justified or not?

(b) To what relief, the said workman is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement has stated as follows :

The first respondent is the head of the Group 4 Security Services Training and they are provided all over India for private companies and industries. The petitioner is an Ex-serviceman served in Indian Air Force for 29 years and got voluntary retirement. He came to know that a Training Officer post in Puducherry Branch was vacant and applied for the same and posted as Training Officer in the third respondent Branch from June 2001 after selection by the second respondent. The petitioner was discharging his duties to the utmost satisfaction of the superiors and flawless in job. He was paid a monthly salary of ₹ 5,500 and was assured of higher emoluments and other benefits. One Valsaraj, working under the control of the second respondent informed that the Training Officer period of the petitioner was satisfactory and hence he was elevated to a higher post and would be placed shortly. On the basis of the assurance given by the said Valsaraj, the Training Officer job was handed over to one Ayyannappan and was waiting for the communication. When the petitioner enquired the third respondent, there was no response and the petitioner was asked to contact the second respondent. The petitioner contacted the second respondent on 25-6-2002 and appraised of the position. The petitioner was shocked to hear that a assured by the Area Manager, he was not elevated to any higher position. The second respondent asked the petitioner to put the matter in writing and as such a complaint was lodged with the second respondent on 26-6-2002. After the complaint was lodged with the second respondent, one Sakthivel, the Personnel Executive of the respondent came to the petitioner's house on 1-7-2002 and told that since the confirmation order for the Training Officer post of the petitioner has not come, he has to leave the job. Then the petitioner was forced by the said Sakthivel to give the resignation letter. For the fraudulent act of the said Valsaraj, the petitioner has to leave the job and in spite of the complaint lodged with the second respondent, no action was taken against him. He suspects that a conspiracy had taken place and the petitioner was a victim of the said conspiracy. The petitioner was rendered jobless from 16-4-2002 and the second respondent did not care to pay heed to the complaint lodged and enquired into the matter. The first respondent is liable for the act of omissions and commissions by the second and third respondents. Hence, the present industrial dispute is filed against the respondents.

3. The third respondent in his counter statement has stated as follows:

The petitioner was appointed as a probationer on 15-6-2001 for a period of ten months and on completion of this period, he has not been confirmed and since his services were not confirmed, he was not interested to serve in their organization and his probation period came to an end by efflux of time on 15-4-2002. Since he was not confirmed, he was not interested to continue in service and he left on his own after handing over his office to one Ayyannappan. This was a voluntary act on the part of the petitioner and was not the outcome of any force or coercion.

The petitioner was not terminated, dismissed, or retrenched from services and that the petitioner has left service on his own volition at the end of his probationary period. If the petitioner had been forced to resign his job, as alleged by him, he would have lodged a complaint to the appropriate authorities immediately. No such complaint has been received from the petitioner. Further he has not even worked for 12 months and it is not the case of retrenchment and hence, section 25F or 25G will not apply. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and marked Ex.P1 to Ex.P6. On the side of the respondents, neither oral nor documentary evidence was adduced.

5. Now the point for determination is:

Whether the petitioner is entitled for the relief sought for?

On this point:

6. The main contention of the petitioner is that he was appointed as Training Officer in the third respondent from June 2001 and he was paid a monthly salary of ₹ 5,500 and he was informed by one Valsaraj that he would be elevated to a higher post and would be placed shortly and on the instruction and assurance given by the said Valsaraj, he handed over the post of Training Officer to one Ayyannappan. He further contended that there was no response from the third respondent and hence, he complained the same to the second respondent and one Sakthivel, the Personnel Executive of the second respondent came to his house and he forced him to give a resignation letter and he suspected that a conspiracy had taken place and he was a victim of the said conspiracy.

7. In order to prove his claim, the petitioner was examined himself as PW.1 and he deposed that the said facts and marked Ex.P1 to Ex.P6. Ex.P1 is the lawyer's notice, dated 27-7-2002 sent to the respondents by the petitioner. Ex.P2 is the copy of the letter given to the Labour Officer (Conciliation). Ex.P3 is the copy of the

letter sent by the Labour Officer to the petitioner. Ex.P4 is the copy of the counter filed in I.D. No.383/2003. Ex.P5 is the copy of the failure report sent to the Secretary to Government (Labour). Ex.P6 is the copy of the notification, dated 18-12-2003.

8. *Per contra*, the contention of the third respondent is that the petitioner was appointed as a probationer on 15-6-2001 for a period of ten months and on completion of this period, he has not been confirmed and since his services were not confirmed, he was not interested to serve in their organization and his probation period came to an end by efflux of time on 15-4-2002 and since he was not confirmed, he was not interested to continue in service and he left on his own after handing over his office to one Ayyannappan and this was a voluntary act on the part of the petitioner and was not the outcome of any force or coercion. On the side of the respondents, no oral or documentary evidence was adduced.

9. There is no dispute that the petitioner was working as Training Officer with the third respondent from June 2001 for ten months and he was paid a monthly salary of ₹ 5,500. The main contention of the petitioner is that on the instruction of one Valsaraj, he handed over the post of Training Officer to one Ayyannappan and subsequently, he was not given any employment. The respondents have denied the said fact and had contended that if he had been forced to hand over the said post to the said Ayyannappan, he would have lodged a complaint to the appropriate authorities immediately. The said Valsaraj and Ayyannappan have not been denied by the respondents. When the petitioner has claimed that on the instruction of one Valsaraj, he handed over the post of Training Officer to Ayyannappan, it is the duty of the respondents to examine the said persons before this court to disprove the claim of the petitioner. It is not the case of the respondents that they do not know the said persons. In the above circumstances, the non-examination of the said persons is fatal to the case of the respondents.

10. According to the respondents, the petitioner was appointed as a probationer on 15-6-2001 for a period of ten months and on completion of this period, he has not been confirmed and since his services were not confirmed, he was not interested to serve in their organization and his probation period came to an end by efflux of time on 15-4-2002.

11. The above version of respondents would clearly prove that the respondents themselves have admitted that the services of the petitioner have not been confirmed. There is no explanation from the respondents as to why they have not confirmed the services of the petitioner. Even if the petitioner was not discharging his duties to the utmost satisfaction of the superiors, it is the duty of the respondents to extend the probationary period by issuing letter to him. But in this case, the

respondents have not produced any such order before this court. In fact the respondents have not examined any witness or marked any document to prove his claim. Even if the version of the respondents that the petitioner has left his job on his own, is true, it is for the respondents to send a notice to the petitioner and after hearing the petitioner only, they should have dismissed him from service by issuing dismissal order to him. In the absence of any such sufficient evidence, this court cannot believe the version that since the petitioner was not confirmed, he was not interested to continue in service and he left on his own.

12. It is pertinent to refer the following decision, which is relevant to this case:-

2001(3) CLR Page 592:

“Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.”

According to the petitioner, as instructed by one Valsaraj, he handed over the post of Training Officer to one Ayyannappan, which would show that the respondents are not interested in keeping the petitioner as their employee. The learned counsel for the respondents has also submitted that the respondent management has lost their confidence in the petitioner and the above situation created embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. Hence, the above situation created a ground for loss of confidence and hence, I feel that the petitioner has lost the right of reinstatement in this case. Since the petitioner has been terminated from service, his family will be affected for their livelihood. Hence, the petitioner can be awarded any monetary compensation and accordingly, this court is awarded a sum of ₹ 35,000 towards monetary compensation. The point is answered accordingly.

13. In the result, this industrial dispute is partly allowed and the petitioner is not entitled for reinstatement with other benefits. However, the petitioner is entitled to the monetary compensation of ₹ 35,000 (Rupees thirty-five thousand only). No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 12th day of June 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for petitioner:

PW. 1— 11-1-2011 - Jayabalan

List of witnesses examined for respondent : Nil

List of exhibits marked for the petitioner:

Ex.P1— Lawyer's notice sent by the petitioner, dated 27-7-2002.

Ex.P2— Letter by the petitioner to the Conciliation Officer, dated 26-2-2003.

Ex.P3— Letter to the petitioner by the Conciliation Officer, dated 26-3-2003.

Ex.P4— Counter statement filed by the respondent

Ex.P5— Report on failure of conciliation, dated 26-8-2003.

Ex.P6— Notification by the Labour Department, dated 18-12-2003.

List of exhibits marked for the respondent: Nil.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(GO. Rt. No. 158/Lab./AIL/J/2012, dated 12th September 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 1 of 2010, dated 22-3-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Shasun Chemicals and Drugs Limited, Puducherry and Thiru T. Shanmugam over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed

by Secretary to Government (Labour), that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

Dated, the 22nd day of March 2012

I.D. No. 1/2010

T. Shanmugam . . . Petitioner

Versus

The General Manager,
M/s. Shasun Chemicals and
Drugs Limited,
Periyakalpet, Puducherry . . . Respondent.

This industrial dispute coming on this day for hearing before me in the presence of Thiru G. Krishnan, Advocate for the petitioner and Thiru A. Abdul Rachide, Advocate for the respondent and upon perusing the case records, this court passed the following :

ORDER

This industrial dispute arises out of the reference made by the Government under section 10 (1) (c) of the Industrial Disputes Act in G.O. Rt. No. 18/AIL/Lab./J/2010, dated 2-2-2010. The Government made the following reference:

(a) Whether the dispute raised by Thiru T. Shanmugam against the management of M/s. Shasun Chemicals and Drugs Limited, Puducherry over non-employment is justified or not ?

(b) If justified, what relief, the petitioner is entitled to ?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed.

The petition came up for hearing today. PW.1 present, respondent called absent. No representation for respondent. PW.1 already examined. Claim proved. Petition is allowed. No costs.

Written and pronounced by me in the open court on this 22nd day of March 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 159/Lab./AIL/J/2012, dated 12th September 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 24 of 2005, dated 1-3-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Vijay Power Generators Limited, Puducherry and Vijay Power Generators Limited Anna Thozhilalargal Sangam over annual wage revisions and illegal retrenchment of 3 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

Dated, the 1st day of March 2012

I.D. No. 24/2005

The President,
Vijay Power Generators Limited,
Anna Thozhilalargal Sangam,
Puducherry.

.. Petitioner

Versus

The General Manager,
M/s.Vijay Power Generators Limited,
Puducherry

.. Respondent.

This petition coming on this day for hearing before me in the presence of Thiru K. Ravikumar, Advocate for the petitioner and Thiru B. Mohandass, Advocate for the respondent and upon perusing the case records, this court passed the following:

ORDER

This industrial dispute arises out of the reference made by the Government under section 10 (1) (d) of the Industrial Disputes Act in G.O. Rt. No. 153/AIL/Lab./J/2005, dated 12-8-2005. The Government made the following reference:

(a) Whether the claim of the union against the management of M/s.Vijay Power Generators Limited over annual increase of wages, bonus, etc., is justified or not ?

(b) Whether the retrenchment of three workers by the management of M/s.Vijay Power Generators Limited is justified or not ?

(c) To what relief/remedies, they are entitled ?

(d) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. Today (1-3-2012), this petition was called P.W.1 present. Respondent called absent. No representation for respondent. PW.1 already examined, Claim proved. Hence, this petition is allowed. No costs.

Written and pronounced by me in the open court on this 1st day of March 2012.

T. MOHANDASS,

II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

MAHATMA GANDHI POSTGRADUATE INSTITUTE
OF DENTAL SCIENCES

(GOVERNMENT OF PUDUCHERRY INSTITUTION)

Puducherry, the 10th September 2012.

TENDER NOTICE

Sealed tenders offering the rate per litre and kilogram are invited for the purchase of used hyposolution and X-Ray films belonging to the Mahatma Gandhi Postgraduate Institute of Dental Sciences, Puducherry.

2. The rate should be quoted for each item as follows:-

(i) Hyposolution .. Rate per litre ₹

(ii) X-Ray films .. Rate per kg. ₹

3. The tender in sealed covers superscribed as "Tender for the purchase of hyposolution and X-Ray films" should be addressed to the Dean, Mahatma Gandhi Postgraduate Institute of Dental Sciences, Indira Nagar, Gorimedu, Puducherry-605 006, so as to reach this office on or before 4.00 p.m. on 22-11-2012. The tenders will be opened on the same day at 4.30 p.m.

4. The intending tenderers should pay an earnest money deposit of ₹ 500 (Rupees five hundred only) in the form of demand draft drawn in favour of the Dean, Mahatma Gandhi Postgraduate Institute of Dental Sciences, Puducherry payable in the State Bank of India Main Branch, Puducherry alongwith tender. Otherwise, the tender will summarily be rejected without